



VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Northern Virginia Regional Park Authority
FOR
Great Waves Waterpark
Unpermitted Discharge**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and NVRPA, regarding the Great Waves Waterpark, for the purpose of resolving certain violations of the State Water Control Law and the applicable regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

5. "Discharge" means the discharge of a pollutant.
6. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
 - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
7. "Facility" or "Site" means the Great Waves Waterpark located at 4001 Eisenhower Avenue, Alexandria, Virginia 22304.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
9. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
10. "NVRPA" means the Northern Virginia Regional Park Authority, a collective, interjurisdictional, park authority created pursuant to the Park Authorities Act, Va. Code §15.2-5700 *et seq.* NVRPA is a "person" within the meaning of Va. Code § 62.1-44.3.
11. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
12. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
13. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause

pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are “pollution.” Va. Code § 62.1-44.3.

14. “PReP” means DEQ’s Pollution Response Program.
15. “Regulation” means the “Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation,” 9 VAC 25-31-10, *et seq.*
16. “State Water Control Law” means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
17. “State waters” means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
18. “Va. Code” means the Code of Virginia (1950), as amended.
19. “VAC” means the Virginia Administrative Code.
20. “VPDES” means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. NVRPA owns and operates the Great Waves Waterpark located at 4001 Eisenhower Avenue, in Alexandria, Virginia.
2. The Facility does not have a VPDES permit to discharge pollutants into state waters.
3. Lake Cook is an impounded state water located in the Potomac River Basin. Lake Cook is not an assessed body of water, however an unnamed tributary to Cameron Run runs through Lake Cook to Cameron Run. Cameron Run is listed in DEQ’s 305(b) report as impaired for recreational use upstream of the Facility. Hunting Creek is located approximately one mile downstream from the Facility, and is listed as impaired for aquatic life, fish consumption, and recreational use.
4. On May 12, 2021, DEQ PReP staff received a report from the VA Department of Emergency Management that a private citizen observed dead fish in Lake Cook in Alexandria. This incident was assigned IR # 299500. The City of Alexandria Fire Department responded to the location and found a swimming pool at the Great Waves Waterpark being pumped and discharged into Lake Cook. The swimming pool reportedly contained 60,000 gallons of chlorinated pool water.

5. On May 13, 2021, DEQ PReP staff responded to the Site, along with the City of Alexandria Fire Marshal, and the City of Alexandria Water Quality Compliance staff. DEQ staff observed an unknown fine blue substance within the pool, which was also actively being discharged into Lake Cook. This was later determined to be loose rubber particles from a piece of splash-pad flooring. DEQ staff also observed and counted the following 133 deceased fish in Lake Cook:
 - a. 32 bullhead catfish
 - b. 2 channel catfish
 - c. 10 brown trout
 - d. 8 crappie
 - e. 7 green sunfish
 - f. 28 bluegill
 - g. 46 minnows
6. Va. Code § 62.1-44.5 states that: “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances
7. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes, or to otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, aquatic life, or other uses.
8. NRO issued a Notice of Violation (No. W2021-05-N-001) to NVRPA for the violations noted above on June 9, 2021.
9. NVRPA responded to the Notice of Violation by submitting a plan and evidence of corrective action to address the violations.
10. DEQ issued a separate demand for \$568 for investigative and fish replacement costs to the NVRPA. NVRPA has reimbursed DEQ for those costs.
11. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
12. The Department has issued coverage under no permits or certificates to NVRPA for the Great Waves Waterpark Facility.
13. Lake Cook is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
14. Based on the results of May 12 report, and the May 13, 2021, inspection, the Board concludes that NVRPA has violated Va. Code § 62.1-44.5 and 9 VAC 25-31-50, as described in paragraphs C(4) and C(5), above.

15. On June 30, 2021, Department staff met with representatives of NVRPA to discuss the violations, including NVRPA's corrective actions. During the call it was determined that the pool system was originally designed in the 1980s to allow for direct discharges to Lake Cook. Since that time, it has been redesigned to be a closed-loop system, which does not discharge to the Lake under normal circumstances. On the date of the incident, untrained staff pressure washed a blue, rubberized, splash pad, which agitated the surface of the pad and resulted in fine blue particles entering the pool system, which were unable to be removed through the pool's filtration system. As a result, pool staff emptied the pool water to Lake Cook, using the old waste water line, not realizing the effluent was not directed to the sanitary sewer.
16. NVRPA has submitted documentation that verifies that the violations as described in paragraphs C(4) and C(5), above, have been corrected. NVRPA indicated during the June 30, 2021, meeting that it had hired an environmental contractor to remove the fine particles from the area around the outlet pipe in Lake Cook, following the discharge; additionally, it had retrained its staff, and permanently disabled the valve and piping between the pool and Lake Cook, to prevent future discharges.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders NVRPA, and NVRPA agrees to pay a civil charge of \$16,260 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

NVRPA shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, NVRPA shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of NVRPA for good cause shown by NVRPA, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, NVRPA admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. NVRPA consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. NVRPA declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by NVRPA to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. NVRPA shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. NVRPA shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. NVRPA shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and

- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

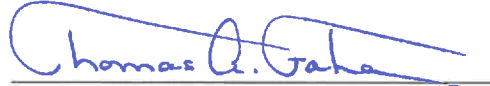
Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and NVRPA. Nevertheless, NVRPA agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after NVRPA has completed all of the requirements of the Order;
 - b. NVRPA petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to NVRPA.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve NVRPA from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by NVRPA and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of NVRPA certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind NVRPA to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of NVRPA.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, NVRPA voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 20th day of October, 2021.



Thomas A. Faha, Regional Director
Department of Environmental Quality

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Northern Virginia Regional Park Authority voluntarily agrees to the issuance of this Order.

Date: 8/19/2021 By: Paul Gilbert, Executive Director
(Person) (Title)
Northern Virginia Regional Park Authority

Commonwealth of Virginia
City/County of Fairfax

The foregoing document was signed and acknowledged before me this 19th day of
August, 2021, by Paul Gilbert who is
Executive Director of Northern Virginia Regional Park Authority, on behalf of
the authority.

Linda L. Butterworth
Notary Public

7536149
Registration No.

My commission expires: September 30, 2024

Notary seal:

